



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2018-0504]

RIN 1625-AA00

Safety Zone; Lake Michigan, North Avenue Beach, Chicago, IL

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone on Lake Michigan near North Avenue Beach in Chicago, IL. This temporary safety zone is necessary to protect spectators, participants, and vessels from potential hazards associated with a jetpack demonstration. Entry into, transiting, or anchoring within the safety zone is prohibited unless authorized by the Captain of the Port Lake Michigan or a designated representative.

DATES: This rule is effective from 5 p.m. on July 19, 2018 through 12:50 p.m. on July 20, 2018.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type USCG-2018-0504 in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions about this rule, call or email LT John Ramos, Marine Safety Unit Chicago, U.S. Coast Guard; telephone (630) 986-2155, or email D09-DG-MSUChicago-Waterways@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
FR	Federal Register
NPRM	Notice of proposed rulemaking
§	Section
U.S.C.	United States Code

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are “impracticable, unnecessary, or contrary to the public interest.” Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because doing so would be impracticable. The Coast Guard did not receive the final details of this jetpack demonstration in time to publish an NPRM. As such, it is impracticable to publish an NPRM because we lack sufficient time to provide a reasonable comment period and then consider those comments before issuing the rule.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would inhibit the Coast Guard’s ability to protect participants, mariners and vessels from the hazards associated with this event.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 33 U.S.C. 1231. A jetpack demonstration will be conducted at North Avenue Beach in Chicago, IL on July 19 from 5 p.m. through 6:15 p.m. on July 19, 2018; with a rain date of July 20, 2018 from 11:45 a.m. to 12:50

p.m. The COTP has determined that the potential hazards associated with the jetpack demonstration pose a significant risk to public safety and property. Specifically, hazards include potential for collision with spectators, fires and/or explosions from mechanical malfunctions. This rule is needed to protect personnel, vessels, and the marine environment in the navigable waters within the safety zone while the jetpack demonstration takes place.

IV. Discussion of the Rule

This rule establishes a safety zone from 5 p.m. through 6:15 p.m. on July 19, 2018; with a rain date of July 20, 2018 from 11:45 a.m. through 12:50 p.m. The safety zone will encompass all navigable waters of Lake Michigan near North Avenue Beach, bounded by a line drawn from the shore at 41°55.008 N, 087°37.564 W, then northeast to 41°55.068 N, 087°37.480 W, then southeast to 41°54.899 N, 087°37.151 W, then southwest back to the shore at 41°54.826 N, 087°37.214 W. The duration of the zone is intended to protect personnel and vessels in these navigable waters during the jet pack demonstration. Entry into, transiting, or anchoring within the safety zone is prohibited unless authorized by the Captain of the Port Lake Michigan, or a designated on-scene representative. The Captain of the Port or a designated on-scene representative may be contacted via VHF Channel 16 or at (414) 747-7182.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive Orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive Orders, and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches

that maximize net benefits. Executive Order 13771 directs agencies to control regulatory costs through a budgeting process. This rule has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB), and pursuant to OMB guidance it is exempt from the requirements of Executive Order 13771.

We conclude that this rule is not a significant regulatory action because we anticipate that it will have minimal impact on the economy, will not interfere with other agencies, will not adversely alter the budget of any grant or loan recipients, and will not raise any novel legal or policy issues. The safety zone created by this rule will be relatively small and enforced on one day from 5 p.m. through 6:15 p.m. on July 19, 2018; with a rain date of July 20, 2018 from 11:45 a.m. through 12:50 p.m. Under certain conditions, moreover, vessels may still transit through the safety zone when permitted by the Captain of the Port Lake Michigan.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This safety zone will not have a significant economic impact on a substantial number of small entities for the reasons cited in the Regulatory Planning and Review section. Additionally, before the enforcement of the zone, we will issue local Broadcast Notice to Mariners and Local

Notice to Mariners so vessel owners and operators can plan accordingly.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this rule has implications for federalism or Indian tribes, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section above.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023-01, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969(42 U.S.C. 4321-4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves establishment of a safety zone on Lake Michigan near North Avenue Beach in Chicago, IL that will last between one and two hours and will prohibit entry into a designated area. It is categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 01. A Record of Environmental

Consideration supporting this determination is available in the docket where indicated under ADDRESSES.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the FOR FURTHER INFORMATION CONTACT section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165 -- REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5;

Department of Homeland Security Delegation No. 0170.1.

2. Add § 165.T09-0504 to read as follows:

§ 165.T09-0504 Safety Zone; Lake Michigan, North Avenue Beach, Chicago, IL.

(a) Location. All navigable waters of Lake Michigan near North Avenue Beach, bounded by a line drawn from the shore at 41°55.008 N, 087°37.564 W, then northeast to 41°55.068 N, 087°37.480 W, then southeast to 41°54.899 N, 087°37.151 W, then southwest back to the shore at 41°54.826 N, 087°37.214 W.

(b) Enforcement period. This regulation will be enforced from 5 p.m. through 6:15 p.m.

on July 19, 2018; with a rain date of July 20, 2018 from 11:45 a.m. through 12:50 p.m.

(c) Regulations. (1) In accordance with the general regulations in §165.23 of this part, entry into, transiting, or anchoring within this safety zone is prohibited unless authorized by the Captain of the Port Lake Michigan or a designated on-scene representative.

(2) This safety zone is closed to all vessel traffic, except as may be permitted by the Captain of the Port Lake Michigan or a designated on-scene representative.

(3) The “on-scene representative” of the Captain of the Port Lake Michigan is any Coast Guard commissioned, warrant or petty officer who has been designated by the Captain of the Port Lake Michigan to act on his or her behalf.

(4) Vessel operators desiring to enter or operate within the safety zone shall contact the Captain of the Port Lake Michigan or an on-scene representative to obtain permission to do so. The Captain of the Port Lake Michigan or an on-scene representative may be contacted via VHF Channel 16 or at (414) 747-7182. Vessel operators given permission to enter or operate in the safety zone must comply with all directions given to them by the Captain of the Port Lake Michigan, or an on-scene representative.

Dated: June 18, 2018

THOMAS J. STUHLREYER,
Captain, U. S. Coast Guard,
Captain of the Port Lake Michigan

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